

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MONICA TOTH,) Case No.
)
Defendant.) Judge:
)

COMPLAINT AND JURY DEMAND

The plaintiff United States of America, with the authorization of a delegate of the Secretary of the Treasury in accordance with the provisions of 31 U.S.C. § 3711(g)(4)(C), and at the direction of a delegate of the Attorney General, brings this action to collect a civil penalty assessed against Monica Toth pursuant to 31 U.S.C. § 5321(a)(5), for her failure to timely report her financial interest in, and/or her signatory or other authority over, a foreign bank account for the 2007 calendar year. The unpaid balance of this penalty, including statutory additions and accruals, totals \$2,173,703, as of July 17, 2015.

The United States demands a trial by jury with respect to all issues so triable.

In support of this action, the United States alleges as follows:

Jurisdiction and Venue

1. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1345.
2. Defendant Monica Toth resides within the jurisdiction of the Court.
3. Venue is proper under 28 U.S.C. § 1391.

Defendant's Financial Interest in a Foreign Financial Account

4. In 1999 a financial account was opened at UBS AG, at Bahnhofstrasse 4S, Zurich, Switzerland, in the name of defendant Monica Toth, #NNNNNN.N17 ("Account").

5. The Account has remained open continuously since 1999.

6. At all times since the Account was opened, Monica Toth has held the authority (alone or in conjunction with another person) to control the disposition of the funds in the Account by direct communication (in writing or otherwise) to UBS AG.

7. At all times since the Account was opened, Monica Toth has had a financial interest in the Account.

8. At all times during calendar year 2007, the balance of the Account exceeded \$10,000.

9. The balance of the Account in calendar year 2007 was approximately \$4,000,000.

Defendant's Failure to Timely Report Financial Interest in Foreign Financial Account

10. All United States citizens having a financial interest in, or signatory or other authority over, any foreign financial accounts that individually or collectively had a maximum value greater than \$10,000 during the calendar year are required to file with the United States Treasury annually, on a calendar-year basis, reports disclosing the existence of such accounts (Financial Bank Account Reports, or FBARs). 31 U.S.C. § 5314 and 31 C.F.R. § 1010.350.

11. The FBAR for a calendar year is due no later than June 30 of the year following the close of the calendar year. 31 C.F.R. § 1010.306(c).

12. All persons required to file federal income tax returns (Form 1040) are required to disclose on Schedule B of the Form 1040 whether, at any time during the calendar year, they

had, *inter alia*, a financial interest in or signatory authority over a financial account located in a foreign country.

13. Monica Toth prepared her own federal income tax return for the year 2007.
14. Monica Toth signed her 2007 federal income tax return under penalty of perjury.
15. Monica Toth timely filed her 2007 federal income tax return with the Internal Revenue Service.
16. Monica Toth did not report on her 2007 federal income tax return any income or loss from the Account, or otherwise disclose on the return the existence of the Account.
17. After the time to file the FBAR for the prior calendar year ended in June, 2008, the IRS initiated an audit as to the tax liability of Monica Toth for the 2007 tax year, in connection with which the IRS investigated matters relating to the Account.

Claim for Relief: Judgment for Civil Penalty (31 U.S.C. § 5321(a)(5))

Liability for the Civil Penalty

18. During the 2007 calendar year, Monica Toth was a United States citizen who resided in the United States.
19. During the 2007 calendar year, Monica Toth had a financial interest in, and/or signatory or other authority over, the Account.
20. The Account was a financial account in a foreign country.
21. Monica Toth failed to file an FBAR disclosing the existence of the Account for the 2007 calendar year on or before June 30, 2008.
22. Monica Toth voluntarily and intentionally violated a known duty to appropriately and timely disclose the existence of the Account to the Internal Revenue Service and the Department of the Treasury.

23. The failure of Monica Toth, to timely file the FBAR with regard to the 2007 calendar year was willful within the meaning of 31 U.S.C. § 5321(a)(5).

Assessment and Collection of the Civil Penalty

24. As of June 30, 2008, the balance of the Account was at least \$4,347,407.

25. On September 19, 2013, in accordance with 31 U.S.C. § 5321(a)(5)(C)(i), a delegate of the Secretary of the Treasury assessed a civil penalty (“FBAR Penalty”) against Monica Toth in the amount of \$2,173,703, due to Monica Toth’s willful failure to disclose the Account to the IRS.

26. On or about September 19, 2013, a delegate of the Secretary of the Treasury sent Monica Toth notice of the assessment of the FBAR Penalty and a demand for payment.

27. Despite notice and demand, Monica Toth has neglected, refused, or failed to pay the FBAR penalty.

28. Monica Toth is liable to the United States for the unpaid balance of the FBAR Penalty, as well as statutory additions and accruals, including a late-payment penalty pursuant to 31 U.S.C. § 3717(c)(2) and 31 C.F.R. § 5.5(a) and accrued interest, in the total amount of \$2,173,703, as of July 17, 2015, plus statutory additions and accruals from that date until the liability is paid in full.

29. This civil action to collect the FBAR Penalty, and the associated penalties and interest, is timely under 31 U.S.C. § 5321(b)(2), because it is filed within two years of September 19, 2013, the date that the penalty was assessed.

WHEREFORE, the plaintiff United States of America demands that this Court:

(a) Enter judgment in favor of the plaintiff United States of America and against defendant Monica Toth for the FBAR penalty, including statutory additions and accruals, for the

2007 income tax year, in the total amount of \$2,173,703, as of July 17, 2015, plus statutory accruals from that date until fully paid; and,

(b) Award the United States of America its costs, and such further relief as the Court deems just and proper.

JURY DEMAND

The plaintiff United States of America demands a trial by jury on all issues so triable.

Dated: September 16, 2015

Respectfully submitted,

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division, U.S. Department of Justice

/s/Andrew A. De Mello
ANDREW A. DE MELLO
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044-0055
Telephone: (202) 307-2007
Email:Andrew.a.de.mello@usdoj.gov